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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 ANTHONY EUGENE LEWIS,) CASE NO. C08-1201-JCC-MAT
09 Plaintiff,)
10 v.) ORDER
11 KING COUNTY,)
12 Defendant.)
13 _____)

14 This matter comes before the Court on Plaintiff's Application for a Certificate of
15 Appealability Under 28 U.S.C. § 2253 and Motion for Stay (Dkt. No. 31) and Defendant's
16 Response (Dkt. No. 36). The Court has carefully considered these documents and the balance
17 of the case file and has determined that oral argument is not appropriate. The Court finds and
18 rules as follows.

19 Plaintiff is proceeding *pro se* and *in forma pauperis* in this 42 U.S.C. § 1983 civil
20 rights case. He requests a certificate of appealability pursuant to 28 U.S.C. § 2253 and a stay
21 so as to appeal United States Magistrate Judge Mary Alice Theiler's March 12, 2009, Order
22 (Dkt. No. 25) denying his motion to amend his complaint. (Application for COA 1 (Dkt. No.
31).) The Court DENIES Plaintiff's application and motion for the following reasons.

01 First, as mentioned above, Plaintiff has filed a § 1983 civil rights complaint, not a
02 habeas petition.¹ The certificate of appealability that Plaintiff seeks may only be issued in a
03 habeas corpus proceeding under 28 U.S.C. § 2255. *See* FED. R. APP. P. 22(b); 28 U.S.C.
04 § 2253. As such, the Court cannot issue a certificate of appealability pursuant to 28 U.S.C.
05 § 2253 as requested by Plaintiff.

06 Second, Plaintiff has already objected to the March 12, 2009, Order by filing a Federal
07 Rule of Civil Procedure 72(a) objection for consideration by the undersigned, (*see* Dkt. No.
08 27), and today the Court has overruled such objection. The Court does not find it appropriate
09 to stay the proceedings in this action so that Plaintiff may file a meritless appeal of the Order.

10 In addition, the Ninth Circuit has “jurisdiction of appeals from all *final decisions* of
11 the district courts.” 28 U.S.C. § 1291 (emphasis added). The instant action is still proceeding
12 and the district court has not yet entered a final judgment. As such, the Ninth Circuit presently
13 lacks jurisdiction over the issues Plaintiff raises. *See* 15A CHARLES ALAN WRIGHT, ARTHUR
14 R. MILLER, & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3914.1 (2d ed.
15 1991) (“Orders granting or denying amendment of the pleadings . . . are not final, unless
16 judgment is entered under Civil Rule 54(b) or exceptional circumstances persuade a court to
17 apply collateral order doctrine or some other expansive theory of finality.”) Accordingly, the

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22 ¹Defendant submits evidence showing that Plaintiff’s present incarceration is the result of
a 2007 felony Judgment and Sentence in which Plaintiff was sentenced to 84 months for
residential burglary. (Dkt. No. 37 at 6–10.) He is no longer in custody for the conviction associated
with his § 1983 complaint.

01 Court DENIES both the application for a certificate of appealability and the motion for a stay.

02 DATED this 28th day of April, 2009.

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06 John C. Coughenour
07 UNITED STATES DISTRICT JUDGE
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